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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,845	08/06/2004	David G. Koch	YORK.US.2	4844
24111 7590 12/10/2009 MESMER & DELEAULT, PLLC 1 NEW HAMPSHIRE AVE. SUITE 125 PORTSMOUTH, NH 03801			EXAMINER BARTOSIK, ANTHONY N	
			ART UNIT 3635	PAPER NUMBER
			NOTIFICATION DATE 12/10/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/710,845	Applicant(s) KOCH ET AL.	
	Examiner ANTHONY N. BARTOSIK	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 & 17-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a Non-Final rejection sent in response to Applicant's Arguments.

Response to Arguments

1. The Examiner has considered Applicant's remarks with respect to rejection of York Flashing in view of Healy et al. and finds them persuasive, as Healy et al. does not specifically disclose the fabric having wicking capability. The previous rejection is accordingly withdrawn. The Examiner notes Applicant's objection to numerous non-final rejections and recognizes the inconvenience, however, an additional non-final rejection based on new art is deemed necessary and proper.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 2 is rejected for being an improper Markush group. "The materials set forth in the Markush group ordinarily must belong to a recognized physical or chemical class or to an art-recognized class." MPEP 2173.05(h). The materials listed are not recognized equivalents.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over**

<http://web.archive.org/web/20020602134312/www.yorkmfg.com/default.asp?linknum=27>

(hereinafter "York Flashing") in view of Ruiz et al. (U.S. 2002/0152696 A1).

6. In Re claim 1, York Flashing discloses a flashing membrane (copper layer), the flashing membrane having a first side and a second side opposite the first side, a first reinforcing cloth (woven glass fabric layer) adhered to the flashing membrane first side, York Flashing discloses an upper layer of woven glass fabric, but does not disclose a wicking cloth. Paragraphs [0004], [0005], [0019], and [0021] of Ruiz et al. teach the use of wicking fabric placed on an exterior for drawing moisture along its length to facilitate and control drainage.

it by capillary action. Water is both drawn into the drainage conduit and also travels along its length through the fabric toward the area of the moisture collection reservoir, effectively making the entire outside perimeter of the drainage conduit a vehicle for conveying moisture. The drainage

Para. [0005] of Ruiz et al.

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It would have been obvious to one skilled in the art at the time of the invention to include a wicking layer as taught by Ruiz et al. to the top of York Flashing as a combination of prior elements according to known methods to yield predictable results.

7. In Re claims 2, 4, and 8-10, the above combination discloses and/or renders obvious the claimed limitations.

8. In Re claims 3, 5, and 6, the combination of York Flashing and Ruiz et al. disclose the claimed invention except for the particulars to the dimension of the flashing membrane layer and wicking cloth and the weight of the reinforcing cloth. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have properly dimensioned both the reinforcing and wicking layers as claimed because applicant failed to state a criticality for the necessity of the limitation and the prior art of record is capable of being dimensioned to meet the limitation as claimed. See MPEP 2144.04(IV)(A).

9. In Re claim 7, Ruiz et al. teaches the wicking cloth, however, it does not disclose the material from which its made. It would have been obvious to one skilled in the art at the time of the invention to have chosen one of the claimed materials since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. MPEP 2144.07.

10. In Re claim 17, York Flashing discloses a flashing membrane (copper layer), the flashing membrane having a first side and a second side opposite the first side, a reinforcing cloth (lower woven glass fabric layer) adhered to the flashing membrane first side,

a second reinforcing cloth (upper woven glass fabric layer) adhered to the flashing membrane second side. York Flashing does not however disclose the wicking material.

11. Paragraphs [0004], [0005], [0019], and [0021] of Ruiz et al. teach the use of wicking fabric placed on an exterior for drawing moisture along its length to facilitate and control drainage.

It would have been obvious to one skilled in the art at the time of the invention to include a wicking layer as taught by Ruiz et al. to the top of York Flashing as a combination of prior elements according to known methods to yield predictable results.

Regarding the limitation of the wicking cloth being selected from the group consisting of polyester, polypropylene, polypropylene nylon, and polyethylene, Ruiz et al. teaches the wicking cloth, however, it does not disclose the material from which its made. It would have been obvious to one skilled in the art at the time of the invention to have chosen one of the claimed materials since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. MPEP 2144.07.

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12. In Re claims 18-20, the combination discloses and/pr renders obvious the claimed limitations.

13. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sourlis (US 6,023,892) in view of York Flashing and Ruiz et al. (US 2002/0152696).

14. In Re claims 21 and 24, Figure 1 of Sourlis teaches an inner wall (12), an outer wall (14), and a combination through-wall masonry flashing and drainage device (20), the device (20) having a first edge and a second edge opposite the first edge,

wherein the first edge of the device (20) is secured to the inner wall (12) with the wicking cloth (32) facing up, and the second edge of the device (20) is secured beyond the outer wall (14), such that water between the inner wall (12) and outer wall (14) is drawn through a mortar joint at the base of the outer wall (14) to the outside of the outer wall (14) by the wicking action of the wicking cloth (32) without the need for vents.

Sourlis does not however, teach the particulars of the claimed drainage device.

The combination as set forth in the rejections to claims 1 and 17 teaches the claimed limitations of the through-wall flashing. It therefore, it would have been obvious to one skilled in the art at the time of the invention to combine the prior art elements of York Flashing and Ruiz et al. according to known methods to yield a predictable result.

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15. In Re claim 22, Figure 3 of Sourlis discloses the first edge being secured at a higher elevation on the inner wall (12) than the second edge that is secured to the outer wall (14).

16. In Re claim 23, Figure 3 of Sourlis discloses a horizontal concrete support upon which the inner wall (12) and outer wall (14) are supported, wherein the device (20) second edge is disposed between and beyond the outer wall (14) and concrete support.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY N. BARTOSIK whose telephone number is (571)270-3112. The examiner can normally be reached on M-F 7:30-5:00; E.D.T.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

Anthony Bartosik
Examiner
Art Unit 3635